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**MINUTES FOR A REGULAR MEETING OF THE CIVIL SERVICE COMMISSION
HELD AT 6:00 P.M., THURSDAY EVENING, JANUARY 26, 2006
CITY COUNCIL CHAMBERS, #2 CIVIC CENTER PLAZA – 2ND FLOOR**

MEMBERS PRESENT: Boureslan, Ali
Ellis, William - Chair
Gezelius, Ken
Graham, Elijah
Martinez, Ramy
Peña, Andrew
Ruck, Lance
Scott, Valerie

MEMBERS ABSENT: Schwartz, Elma

ALSO PRESENT:

Adauto, Pat – Deputy City Manager
Aguilar, Eddy
Al-Dasouqi, Ziad
Alvarado, Jesus III – Human Res.
Balliew, John – EPWU
Batoon, John – Assistant City Attorney
Buenning, Rosy – CSC Recorder
Conner, Rick – Engineering
Cuellar, Lupe – Asst City Attorney
Fargo, Peter - Human Resources
Garcia, Jose
Jimenez, Jose
Kilgore, Dinah
Lopez, Stephen
Loweree, Fred – EPWU
Lugo, Joe

Merrifield, Norman – Parks & Rec.
Michel, Mary - Human Res.
Mungaray, Cecilia - Human Res.
Rivera, Zake
Rodriguez, Daniel
Rogers, David - Human Res.
Sanchez, Ana
Senclair, Arturo Jr.
Sharpe, Terry – Airport
Smyth, Ellen – Environmental Svcs
Thomas, Linda Ball –
CSC Secretary/Interim HR Director
Valdez, Juan
Van Lauwe, Elizabeth – Public Transit
Wilson, Joyce – City Manager

The meeting convened at 6:04 p.m. with a quorum of 8 Commissioners present and Chair Ellis presiding.

CONSENT AGENDA

Ms. Thomas requested that Item 1 be tabled.

Commissioner Gezelius requested that Items 2 and 6B be moved to the Regular Agenda.

Chair Ellis requested that Items 4 and 9 be moved to the Regular Agenda and that Item 17 be moved to the beginning of the Regular Agenda as well.

Bill Arballo, AFSCME Local 59, requested that Item 16C be carried over to the end of the agenda because Mr. Padilla's employer had required him to work late, therefore he would not be able to make the meeting at 6 p.m. but he would be attending later.

MOTION TO APPROVE THE CONSENT AGENDA WITH THE MODIFICATIONS MADE BY COMMISSIONER BOURESLAN, SECONDED BY COMMISSIONER PEÑA AND UNANIMOUSLY PASSED.

1. Discussion and Action on Approval of Minutes:

January 12, 2006

This item was tabled concurrent with approval of the Consent Agenda.

2. Discussion and Action on Approval of Contracts:

- A. Personal Services Contract with Emma Magadan-Beall to perform the duties of Foreign Trade Zone Coordinator from January 27, 2006 through January 26, 2007, for the Airport.

This item was addressed at the beginning of the Regular Agenda.

Commissioner Gezelius asked if this was an intern position.

Ms. Thomas said she believed that it was a graduate intern position.

Commissioner Martinez asked if it was unusual for a graduate intern to go into this type of position because of the duties to be performed and asked if there was a reasonable attempt at advertising for the position.

Ms. Thomas explained that she only needed 1 year of experience for this position, which was a coordinator position, not a manager position.

Mr. Abeln, Airport Director, said they did not advertise for this position. He explained that this contractor had been working in the Foreign Trade Zone for approximately one year while completing graduate studies at UTEP. He added that she had gained a tremendous amount of experience and was able to represent the FTZ very effectively. Mr. Abeln explained that this would probably be a classified position in the next 1 to 1 ½ years. He explained that this was a transitional position and if after the set period they believe it works well, then they will place it in the classified system.

Commissioner Martinez stated that he would hate to have the perception that people in the community are not given the opportunity to compete for these types of positions.

Mr. Abeln agreed that if in the final analysis should this position become permanent, it should be through a competitive process. He said several factors depend on how the City restructures within the next year.

Discussion.

Commissioner Boureslan agreed that this should be a competitive process, even if it is only for a period of one year.

Mr. Abeln stated that their credibility with the Commission was important to them. He withdrew the contract given the questions and concerns that the Commission had expressed and told the Commission they would address it in a different fashion.

MOTION TO DELETE ITEM 2 MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

3. Notice of Promulgation of Eligible Lists:

- A. Personnel Aide = Promulgated 01/05/06 (P-4)(CR-5)
- B. Plumbing Inspector = Promulgated 01/05/06 (P-2)(O-2)
- C. Cashier I = Promulgated 01/06/06 (P-7)(CR-1)
- D. Public Arts Program Coordinator = Promulgated 01/11/06 (P-2)(O-7)

4. Discussion and Action on Approval of Classification Actions:

New Job Class/Revised Job Class/Revised Job Class & Grade/Revised Job Class, Title & Grade

	<u>Title</u>	<u>Code</u>	<u>Grade</u>
A.	Proposed: Instrumentation Control Superintendent	5460	PM 77
B.	Proposed: Instrumentation Control Asst Superintendent	5459	PM 75
C.	Proposed: Desalination Plant Superintendent	5464	PM 80

This item was addressed at the beginning of the Regular Agenda.

Chair Ellis asked if these positions were all new and asked if there were any comparable positions.

Ms. Thomas said they were all new positions for the El Paso Water Utilities and stated they were created because they are getting ready to open a desalination plant on the east side of town.

John Balliew, Water Systems Division Manager, stated that the most similar position to Item 4C was a Plant Superintendent. He said that the reason they were making a distinction with the Desalination Plant Superintendent was because the type of treatment is so drastically different than the current treatment. He stated that there weren't any comparable positions to items 4A or 4B.

Discussion.

MOTION TO APPROVE ITEMS 4A-4C MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

5. For Notation: Request to have appeal heard by Arbitrator:

Whitaker, Christine L. – Suspension - Police Dept. (IA05-107)

6. Discussion and Action on request to assign pending appeal cases:

- A. Hernandez, Lilia – Suspension – Public Transit
- B. Viescas, Marta – Suspension – Fire Department

This item was addressed at the beginning of the Regular Agenda.

Commissioner Gezelius wondered if they went through the entire hearing process and expense for a one-day suspension. He wondered if the Commission should hear the cases *en banc*.

Commissioner Ruck said that as a person who has sat through 2 days of testimony he was not willing to do this. He explained to the Commission that in order for the Commission to hear the case they would have to take exhibits, witnesses, etc., they couldn't just hear the case with the backup provided today.

Discussion.

MOTION TO HEAR THE APPEAL AS A BODY MADE BY COMMISSIONER BOURESAN, SECONDED BY COMMISSIONER GEZELIUS BUT FAILED BY A VOTE OF 5 TO 2.

Ayes: Commissioners Gezelius, Boureslan

Nays: Commissioner Peña, Graham, Martinez, Scott, Ruck

MOTION TO ASSIGN THE CASES TO HEARING OFFICERS AS IS USUALLY DONE MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GRAHAM AND PASSED BY A VOTE OF 6 TO 1.

Ayes: Commissioners Peña, Graham, Martinez, Gezelius, Scott, Ruck

Nays: Commissioner Boureslan

7. Discussion and Action on request to have name placed on Transfer List:

- A. Delgado, Cynthia – Accountant I – Financial Services
- B. Guevara, Martha – Secretary III – Engineering Dept.

8. Discussion and Action on request to have name placed on Reinstatement List:

Nicholas, Edward – Police Officer – Police Department

9. Discussion and Action on Request for Temporary Promotion:

Brown, Leroy – Environmental Services

From: Route Foreman

To: Automated Refuse Collection Operator

This item was addressed at the beginning of the Regular Agenda.

Chair Ellis asked the Commissioner Recorder when the eligible list for this position expired and she said it had expired in May 2005.

Assistant City Attorney Lupe Cuellar explained that any of the reasons under Rule 11, Section 10.a. would allow the Commission to temporarily promote an employee.

Chair Ellis stated that there are 50 Automated Refuse Collection Operator positions in the City yet there wasn't an eligible list available for these positions. He stated that this was a good example of their concerns of wanting to have eligible lists available. He also wondered what the proposed length of this employee's absence might be.

Ellen Smyth, Director of Environmental Services, stated that they don't know but after a year of absence the employee can be terminated if he or she doesn't return. She added that they currently have 4 vacancies which they need to fill and advised that Human Resources was already working on filling those vacancies. She also told the Commission that since she has been with the City she has hardly hired any employees at all.

Discussion.

MOTION TO APPROVE ITEM 9 MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER BOURESLAN AND UNANIMOUSLY PASSED.

10. A. For Notation: Civil Service Commission Action regarding Appeal of Performance Evaluation by Ivonne Jimenez.
- B. For Notation: Civil Service Commission Action regarding Appeal of Performance Evaluation by Rebeca Juarez.

REGULAR AGENDA

Items 2, 4, 6 and 9 were discussed here.

Item 17 was addressed here.

11. Discussion and Action on detail of process followed when hiring Contract Employees.

Commissioner Boureslan said they had received the contract request process as backup, however that backup did not explain the process that the departments go through to select the particular person they choose to fill a contract position. He said that on many contract positions it appeared that the person was hand-picked and that is what the Commission wants to avoid. He wanted the process that the departments follow to select their contract candidate.

Ms. Thomas explained that the process that they received as backup started when Human Resources received a contract request from a department. She believed that each department director would have to explain their own process but stated there are various ways such as interviewing people off eligible lists that have not been hired, advertising on the City's website or simply hiring someone who has filled another contract position that meets the qualifications.

Joyce Wilson, City Manager, said she had talked to the Chair reference this matter and suggested that a policy be put in place to outline those positions where they would normally use contracts, i.e., I.T., Economic Development, City Manager's staff, intern positions, positions funded with grants. She explained how the various processes worked for each area. She told the Commission if they were okay with this suggestion she wanted the opportunity to put something together then bring it back to the Commission for approval in order to do away with some of these issues and concerns.

Commissioner Boureslan said his main concern were the contracts being requested for regular classified positions. For example to fill a position when an employee retires and there is no eligible list.

Assistant City Attorney Lupe Cuellar wanted to make sure that management and Commission understood that the purpose that contract came before the Commission was to ensure that the Civil Service provisions are not circumvented (Section 6.6-5 of the Charter).

Discussion.

MOTION TO TABLE ITEM 11 TO THE 2ND MEETING IN MARCH MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

12. *Item Not Used*

13. A. Discussion and action on probationary evaluation given to Ziad Al-Dasouqi, P.E. on June 14, 2005.

For the benefit of the Commissioners who were not present at the previous meeting, Chair Ellis told them that the Commission had been presented with a couple of matters that came to their attention where people who were terminated either from their promoted position or their new position in the City did not complete their probationary periods and were disqualified from taking an examination for the same reason. These people did not have an appeal mechanism since they were on probation. Chair Ellis asked Mr. Al-Dasouqi if he had previously seen the backup that the Commission had just been presented with, which were Evaluation Notes for Ziad Al-Dasouqi dated May 25, 2005.

Mr. Al-Dasouqi said he had not.

Chair Ellis asked the CSC Recorder to check Mr. Al-Dasouqi's file to see if the noted document was attached to the original evaluation given to Mr. Al-Dasouqi at that time.

Ms. Buenning, CSC Recorder, told the Commission that she had checked the file and the document was not in it.

Chair Ellis asked when he had originally tendered the document in question and also asked why there wasn't a reviewer's signature on the evaluation which would have been in compliance with Rule 14, Section 2, in effect when the evaluation was given.

Mr. Conner said he had originally tendered it with the evaluation in May 2005 and added that Mr. Al-Dasouqi had seen the document. As far as the reviewer's signature he said he was ignorant of that rule.

Commissioner Boureslan asked if Mr. Conner had applied for the position of Engineering Section Chief.

Ms. Thomas said she didn't know.

Assistant City Attorney Lupe Cuellar said that since they were tabling this item they could have that information the next time this item was posted.

Discussion.

Ms. Thomas told the Commission that there were two conflicting documents, which were probably the reasons Mr. Conner signed the evaluation without a reviewer. There is the rule and there is the Employee Performance Evaluation manual. She explained that the manual says that the Department Head signs the evaluation.

Chair Ellis was sure that the rule superceded the manual.

Assistant City Attorney Lupe Cuellar said it did.

Discussion.

Chair Ellis said there were issues concerning potential problems with this evaluation in terms of the fact that it doesn't conform to the requirements of the rule. He believed the matter required further reflection by the Commission.

John Batoon, Asst. City Attorney, agreed with the Chair that the matter that arose today is clearly within the Commission's power to consider the matter, investigate any improprieties, etc. However, there may be a legal issue with respect to what remedies the Commission may consider and at what point they consider them. He gave the Commission notice that those were some of the concerns the City had.

MOTION TO TABLE ITEM 13B TO THE 2ND MEETING IN FEBRUARY MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

- B. Discussion and action on probationary evaluation given to Mr. Jose V. Garcia on November 16, 2004.

Chair Ellis said this was a probationary evaluation for Mr. Garcia given in November 2004 for the position of Auto Service Worker I at the Airport. Chair Ellis said this was another concern that arose when Mr. Garcia came before the Commission to appeal a disqualification for another position. He said he was troubled at how someone could get a combination of individual category ratings and then end up with a zero as the overall rating and asked Mr. Abeln what his thought were.

Mr. Abeln said the Commission probably didn't have the substantial material backup for that performance evaluation including personal notes kept by his supervisor. He asked the Commission to review the entire written record that was available when the evaluation was prepared. He said he supported the rater's decision. Mr. Abeln said that the fact that he wasn't a failure in every single respect but was a failure in those things that were probably most critical to the safe completion of his work, he felt was a reasonable cause to not retain him as an employee.

Ms. Thomas informed the Commission that she had instructed Ms. Buenning to provide them with the correct copy of Mr. Garcia's evaluation dated 05/17/04 through 11/16/04.

Commissioner Martinez requested the item be tabled so the Commission could receive and have time to review all the documentation.

MOTION TO TABLE ITEM 13B TO THE 2ND MEETING IN FEBRUARY MADE BY COMMISSIONER MARTINEZ, SECONDED BY COMMISSIONER PEÑA AND UNANIMOUSLY PASSED.

14. Discussion and Action on amending Rule 14 Efficiency Ratings, Section 7 Appeals. (Tabled 12/08/05)

Chair Ellis said that a couple of meetings ago they discussed whether the rule should be amended to provide that if someone has an overall rating of Exceeds standards or higher, whether that should be an exception to the rule. The logic was that if someone has a rating of Exceeds Standards or higher they qualify for merit and competency increases and therefore won't be affected by the rating.

Bill Arballo, AFSCME Local 59, said they didn't object to the amendment since the Chair had clarified that it wouldn't affect the employees' opportunity for an increase or promotion.

Commissioner Boureslan said that some employees work very hard and deserve an exemplary evaluation instead of Exceeds. He believed they needed to listen to all employees, regardless of their ratings.

Discussion.

MOTION TO APPROVE ITEM 14 MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GEZELIUS BUT FAILED BY A VOTE OF 5 TO 2.

Ayes: Commissioners Peña, Gezeliuz

Nays: Commissioner Graham, Martinez, Boureslan, Scott, Ruck

MOTION TO DELETE ITEM 14 MADE BY COMMISSIONER BOURESAN, SECONDED BY COMMISSIONER GRAHAM AND PASSED BY A VOTE OF 6 TO 1.

Ayes: Commissioners Graham, Martinez, Gezeliuz, Boureslan, Scott, Ruck

Nays: Commissioner Peña

Chair Ellis requested that an agenda item reference the timelines being incorporated into the rule should be posted on the next agenda.

15. Discussion and Action on Grievance filed by:

Aguilar, Eddy – Parks & Recreation re: Written Reprimand Memorandum dated 08/09/05.
(Tabled 01/12/06)

Eddy Aguilar stated that the wording on the memorandum given to him dated August 9th is against his constitutional rights. He was told to stop speaking to public officials or any public reference personnel matters.

Chair Ellis stated that the wording on the memorandum was breathtakingly overbroad and completely unenforceable. However, he stated that being a written reprimand he could not appeal it.

Bill Arballo, Representative for Mr. Aguilar, said that administration titles these documents written reprimands with the intent to take it out of the Commission's jurisdiction. However, the Civil Service Commission can hear an employee's concerns and today's concern is that as a citizen of this country an employee has the right to discuss anything with anyone he chooses to.

Discussion.

Commissioner Ruck said that under the Charter the City Representatives are not supposed to be dealing with the employees other than through the City Manager. There is no prohibition in the Charter that keeps employees from going to their representative on any matters that they may choose, unless there is a departmental policy, Rule 19. He believed this was a moot issue.

The Commission recessed for 10 minutes.

MOTION TO DELETE ITEM 15 MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

Bill Arballo requested Item 16A be addressed in Executive Session.

MOTION TO ADJOURN TO EXECUTIVE SESSION MADE BY COMMISSIONER BOURESAN, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

The Commission retired into Executive Session at 8:17 p.m. to discuss Items 16A, 16B and 16C, and reconvened for Open Session at 9:38 p.m.

MOTION TO ADJOURN EXECUTIVE SESSION AND RETURN TO REGULAR SESSION MADE BY COMMISSIONER MARTINEZ, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

16. Discussion and Action on Hearing Officer's Report and Recommendation:

A. Lopez, Alfredo – Termination – Public Transit (05-SM-17RC) (Tabled 01/12/06)

The matter was discussed in Executive Session. The following action was taken in Open Session.

MOTION TO APPROVE HEARING OFFICER ROBERTA CROSS' RECOMMENDATION AS NOTED BELOW, MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

"1. SUSTAIN THE CHARGES AND SPECIFICATIONS AS TO APPELLANT'S SEPARATION; 2. CONFIRM THE APPELLANT ALFREDO LOPEZ' SEPARATION FROM THE CITY'S EMPLOYMENT; AND 3. DENY APPELLANT ALFREDO LOPEZ' APPEAL."

B. Vela, Javier – Termination – Airport (05-AP-18PP) (Tabled 01/12/06)

The matter was discussed in Executive Session. The following action was taken in Open Session.

MOTION TO APPROVE HEARING OFFICER PATRICIA PALAFOX'S RECOMMENDATION AS NOTED

BELOW, MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

"I RECOMMEND THAT THE TERMINATION OF JAVIER VELA BE SUSTAINED."

C. Padilla, Arturo – Termination – Street Dept. (05-ST-07BY) (Tabled 01/12/06)

The matter was discussed in Executive Session. The following action was taken in Open Session.

MOTION TO REDUCE THE TERMINATION TO A SUSPENSION FROM THE DATE OF TERMINATION THROUGH TODAY'S DATE (01/26/06), MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GRAHAM AND PASSED BY A VOTE OF 4 TO 3.

Ayes: Commissioners Graham, Boureslan, Scott, Ruck

Nays: Commissioner Peña, Martinez, Gezelius

Chair Ellis noted that if the Hearing Officers need an extension to complete their recommendation they had to request permission from the Chair. He did not receive such a request on Item 16C.

17. Discussion and Action on Appeal of Disqualification to take Examination and/or Removal of Name from Eligible List in accordance with C.S.C. Rule 9.1.c.:

- A. Jimenez, Jose – Police Trainee
- B. Lopez, Stephen – Police Trainee
- C. *Item Not Used*
- D. Rivera, Zake – Police Trainee
- E. Rodriguez, Daniel – Police Trainee
- F. Salazar, Rosa – Police Trainee
- G. Sanchez, Fernando Jr. – Police Trainee
- H. Senclair, Arturo Jr. – Police Trainee

Item 17 was addressed before Item 11.

MOTION TO APPROVE ITEM 17 MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

MOTION TO ADJOURN TO EXECUTIVE SESSION MADE BY COMMISSIONER BOURESAN, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

The Commission retired into Executive Session at 9:48 p.m. to discuss Item 18, and reconvened for Open Session at 10:04 p.m.

MOTION TO ADJOURN EXECUTIVE SESSION AND RETURN TO REGULAR SESSION MADE BY COMMISSIONER MARTINEZ, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

18. Discussion and Action on Appeal of Disqualification to take Examination and/or Removal of Name from Eligible List in accordance with C.S.C. Rules and Regulations:

A. Berry, Jorge – Zookeeper (8.1.d.4.)(Tabled 01/12/06)

The matter was discussed in Executive Session. The following action was taken in Open Session.

MOTION TO DENY ITEM 18 MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY A VOTE OF 6 TO 1.

Ayes: Commissioners Peña, Martinez, Gezelius, Bouresland, Scott, Ruck

Nays: Commissioner Graham

19. Discussion and Action on increasing hourly rate for Hearing Officers.


Chair Ellis said that for a long time the Hearing Officers have been getting paid \$100 per hour and that rate has become below what has now become reasonable. He requested the Commission consider \$135 per hour.

Assistant City Attorney Lupe Cuellar said whatever amount the Commission agrees on will have to be approved by City Council.

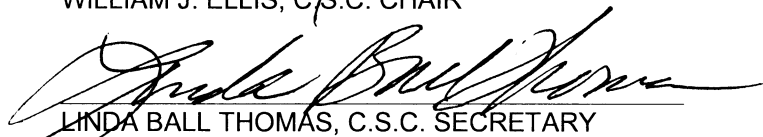
MOTION TO APPROVE AN HOURLY RATE OF \$135 PER HOUR FOR HEARING OFFICERS MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

THERE BEING NO FURTHER BUSINESS BEFORE THE COMMISSION, A MOTION TO ADJOURN WAS MADE BY COMMISSIONER GEZELIUS, SECONDED BY COMMISSIONER BOURES LAN AND UNANIMOUSLY PASSED.

THE MEETING ADJOURNED AT 10:06 P.M.



WILLIAM J. ELLIS, C.S.C. CHAIR



LINDA BALL THOMAS, C.S.C. SECRETARY

2-9-06

DATE APPROVED